

RECEIVED  
CENTRAL FAX CENTERREMARKS

MAY 31 2007

**Response to Claim Rejections Under 35 U.S.C. §103**

Claims 1, 40-43 and 47-53 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Kieturakis U.S. Pat. No. 5,794,626) in view of Tihon et al. (U.S. Pat. No. 5,415,656). Claims 44-45 was rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Kieturakis ('626) in view of Tihon et al. ('656) further in view of Treat (U.S. Pat. No. 4,493,320).

A detailed review of Kieturakis indicates that the outer sheath (30) of the Kieturakis device engages the tissue cutter elements (15) so that longitudinal movement of the outer sheath causes the radial expansion and retraction of the cutter elements (15).

Amended claim 1 calls for a rotating driver for rotating the shaft to which the cutter element is secured and a longitudinal driving member connected to the cutter element to radially extend the cutting element. The outer sheath movement of claim 1 is independent of the radial extension of the cutting element. This allows the sheath to cover the cutting element in the retracted condition for insertion into the patient and to control the length of the tissue cutting element which extends radially away from the shaft. Support for these amendments is found in Figs. 1-10 and page 9, line 6 to page 12, line 2 of the specification.

The outer sheath (30) of the Kieturakis device moves longitudinally so as to adjust the radial position of the cutting blades (15). The device described by Tihon et al. has an electrosurgical blade that is used to make a linear cut when radially expanded. It has no outer sheath to cover the cutting element.

MAY 31 2007

Those skilled in the art would not be lead to make changes in the Kieturakis device based upon the Tihon disclosure. There is no rotational motion imparted to the electrosurgical tissue cutting element of Tihon. Because there is no rotation of the Tihon tissue cutting element and no exterior sheath for covering the tissue cutting elements in the retracted configuration described in Tihon, those skilled in the art would surely not find desirable features to add to the Kieturakis device.

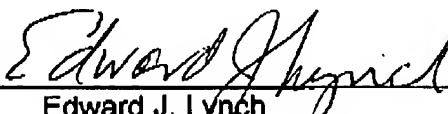
The Treat patent fails to make up for any of the deficiencies of the Kieturakis and the Tihon reference.

The combination of references cited by the Examiner fails to teach all the features of claim 1 and there is no suggestion to those skilled in the art to make modifications that would make up for features the cited references fail to teach.

### Conclusion

The presently pending claims, as amended, are believed to be directed to patentable subject matter. Further consideration pursuant to the concurrently filed RCE and an early allowance are respectfully requested.

Respectfully submitted,

By:   
Edward J. Lynch  
Registration No. 24,422  
Attorney for Applicants

DUANE MORRIS LLP  
One Market  
Spear Tower, Ste. 2000  
San Francisco, CA 94105  
Telephone: (415) 957-3000  
Facsimile: (415) 957-3001  
Direct Dial: (415) 957-3067